

House Bill 239 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 117th, Keen of the 179th, Burkhalter of the 50th, Parrish of the 156th, Cooper of the 41st, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to provisional and final remedies and special proceedings in civil cases, so as to change provisions relating to offers to settle tort claims; to change provisions relating to when a party declining an offer may be liable for attorney's fees and costs; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to provisional and final remedies and special proceedings in civil cases, is amended by striking Code Section 9-11-68, relating to offers to settle tort claims, and inserting in its place a new Code section to read as follows:

"9-11-68.

(a) At any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if it is a counteroffer) before trial, either party may serve upon the other party, but shall not file with the court, a written offer, denominated as an offer under this Code section, to settle a tort claim for the money specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. Any offer under this Code section must:

- (1) Be in writing and state that it is being made pursuant to this Code section;
- (2) Identify the party or parties making the proposal and the party or parties to whom the proposal is being made;
- (3) Identify generally the claim or claims the proposal is attempting to resolve;
- (4) State with particularity any relevant conditions;

1 (5) State the total amount of the proposal;

2 (6) State with particularity the amount proposed to settle a claim for punitive damages,
3 if any;

4 (7) State whether the proposal includes attorney's fees or other expenses and whether
5 attorney's fees or other expenses are part of the legal claim; and

6 (8) Include a certificate of service and be served by certified mail or statutory overnight
7 delivery in the form required by Code Section 9-11-5.

8 ~~(b) When the complaint sets forth a tort claim for money, if the offeree rejects or does not~~
9 ~~accept the offer and the judgment finally obtained by the offeree was not at least 25 percent~~
10 ~~more favorable than the last offer, the offeree shall pay the offeror's reasonable attorney's~~
11 ~~fees and costs incurred after the rejection of the last offer.~~

12 (b)(1) If a defendant makes an offer of settlement which is rejected by the plaintiff, the
13 defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation
14 incurred by the defendant or on the defendant's behalf from the date of the rejection of
15 the offer of settlement through the entry of judgment if the final judgment is one of no
16 liability or the final judgment obtained by the plaintiff is less than 75 percent of such
17 offer of settlement.

18 (2) If a plaintiff makes an offer of settlement which is rejected by the defendant and the
19 plaintiff recovers a final judgment in an amount greater than 125 percent of such offer
20 of settlement, the plaintiff shall be entitled to recover reasonable attorney's fees and
21 expenses of litigation incurred by the plaintiff or on the plaintiff's behalf from the date
22 of the rejection of the offer of settlement through the entry of judgment.

23 (c) Any offer made under this Code section shall remain open for 30 days unless sooner
24 withdrawn by a writing served on the offeree prior to acceptance by the offeree, but an
25 offeror shall not be entitled to attorney's fees and costs under subsection (b) of this Code
26 section to the extent an offer is not open for at least 30 days (unless it is rejected during that
27 30 day period). A counteroffer shall be deemed a rejection but may serve as an offer under
28 this Code section if it is specifically denominated as an offer under this Code section.
29 Acceptance or rejection of the offer by the offeree must be in writing and served upon the
30 offeror. An offer that is neither withdrawn nor accepted within 30 days shall be deemed
31 rejected. The fact that an offer is made but not accepted does not preclude a subsequent
32 offer. Evidence of an offer is not admissible except in proceedings to enforce a settlement
33 or to determine reasonable attorney's fees and costs under this Code section.

34 ~~(d) Upon motion made within 30 days of the entry of the judgment or after voluntary or~~
35 ~~involuntary dismissal, the court shall determine the following:~~

~~(1) If the offer of judgment was 25 percent more favorable than the monetary award, the court shall award reasonable attorney's fees and costs and the court shall set off such reasonable attorney's fees and costs against any award; and~~

(d)(1) The court shall order the payment of attorney's fees and expenses of litigation upon receipt of proof that the judgment is one to which the provisions of either paragraph (1) or paragraph (2) of subsection (b) of this Code section apply; provided, however, that if an appeal is taken from such judgment, the court shall order payment of such attorney's fees and expenses of litigation only upon remittitur affirming such judgment.

(2) If a party is entitled to costs and fees pursuant to the provisions of this Code section, the court may determine that an offer was not made in good faith in an order setting forth the basis for such a determination. In such case, the court may disallow an award of attorney's fees and costs.

(e) Upon motion by the prevailing party at the time that the verdict or judgment is rendered, the moving party may request that the finder of fact determine whether the opposing party presented a frivolous claim or defense. In such event, the court shall hold a separate bifurcated hearing at which the finder of fact shall make a determination of whether such frivolous claims or defenses were asserted and to award damages, if any, against the party presenting such frivolous claims or defenses. Under this subsection:

(1) Frivolous claims shall include, but are not limited to, the following:

(A) A claim, defense, or other position that lacks substantial justification or that is not made in good faith or that is made with malice or a wrongful purpose, as those terms are defined in Code Section 51-7-80;

(B) A claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position; and

(C) A claim, defense, or other position that was interposed for delay or harassment;

(2) Damages awarded may include reasonable and necessary attorney's fees and expenses of litigation; and

(3) A party may elect to pursue either the procedure specified in this subsection or the procedure specified in Code Section 9-15-14, but not both."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

- 1 All laws and parts of laws in conflict with this Act are repealed.